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**3RD SESSION, 37TH PARLIAMENT**

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Morning Sitting

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TUESDAY, OCTOBER 29, 2002

The House met at 10:03 a.m.

Prayers.

### Orders of the Day

**Hon. S. Santori:** Mr. Speaker, I call committee stage of Bill 63.

[1005]

### Committee of the Whole House

WORKERS COMPENSATION  
AMENDMENT ACT (No. 2), 2002  
(*continued*)

The House in Committee of the Whole (Section B) on Bill 63; J. Weisbeck in the chair.

The committee met at 10:08 a.m.

**The Chair:** I call committee on Bill 63, Workers Compensation Amendment Act (No. 2), 2002. For the information of the members here, we're going to be dealing with section 33, and there are a number of subsections in this section. We will be dealing with those subsections individually and voting on each subsection.

On section 33, sections 231 to 238 (*continued*).

**J. MacPhail:** What I could offer is that perhaps we could deal with 231 to 238 as a group. I'm asking questions on that right now, because this is the section that deals with or is a division of part 4. Part 4 is a brand-new section to the Workers Compensation Act entitled "Appeals," and the first division, division 1, deals with the appeal tribunal.

I understand that we have a new term now: the Workers Compensation Appeal Tribunal. I actually don't like doing this, and I know the minister doesn't either — referring to it as WCAT. For ease of debate, I will refer to it as WCAT, but it is the Workers Compensation Appeal Tribunal.

Perhaps the minister could outline the change to the appeals process from the system that was in place and is in place until February.

[1010]

**Hon. G. Bruce:** I hate to do it, because it becomes so overwhelmingly confusing, but I'm happy to do that.

What we had existent was a decision that would come from the Workers Compensation Board. Then from there, everybody has the right to an appeal. If I've got this correctly in order, you first of all would have the ability to go to the review board, which was external to the board. You then could come back to the appeals division, which was internal to the board, and at

any time during that process you could zip out to the medical review panel on any one of those.

What we've done is taken and changed all of that to, we think, offer a more consistent approach. Coming back to the fact that you have a decision that's made — this could be either a worker or an employer— by the Workers Compensation Board. Then if you disagreed with that decision, you would have the ability to go to an internal review. The internal review will be by a different individual or persons than the board itself, and it would be an informal process. The idea here is to try and encourage a timely and better-quality decision to begin with, informal as much as it possibly can be, so that it can be expedited.

As I mentioned at the previous sitting of this committee, there were time lines built in, from the standpoint of both when one can lodge that appeal and how quickly a decision then needs to be rendered. If one is still dissatisfied with the decision of the internal review, one is then able to make an appeal to the Workers Compensation Appeal Tribunal, WCAT. This is an external appeal tribunal, not part of the workers compensation system, and they will then hear that evidence. They have within their ability to have a listing of professional medical people they can call upon where people are looking — in this instance, it would be more than likely an injured worker — either for medical backup or medical consideration.

Then the Workers Compensation Appeal Tribunal is the final authority in the decision-making process. They, too, are given time lines from when one can advance that in the time frame they have to move to the appeals tribunal, and the appeals tribunal has a time frame in which to render a decision.

It is now perhaps linear rather than being bounced all over the place like a pinball machine, and it is, in fact, one less level of appeal. Our view is that in that instance, though, by the manner of how we've set it, we can have a more timely process of appeals. We believe there can be a more efficient delivery of initial decisions made, quality decisions. There is a requirement by all that participate — I'm talking about those that are adjudicating — to be consistent in the application of the board's policy.

Although the Workers Compensation Appeal Tribunal is external to the board, they also have a process of reporting back to the board if there are apparent inconsistencies in respect of the policy that's been set. Ultimately, the Workers Compensation Appeal Tribunal could return an issue of policy to the board relative to a case, but the board's decision in respect to policy would be final. The appeal tribunal would then have to, if that was the case, live within the policy as it had been set out by the Workers Compensation Board.

[1015]

**J. MacPhail:** I note as I travel the province — and this occurred in the 1990s as well.... But as I travel the province with my colleagues now on various legislative matters, often British Columbia in this particular

area is compared to Alberta. It's mainly on the assessment rate, that assessments are generally higher in British Columbia than they are in Alberta, but I note that the government chose to not look at the model that exists in workers compensation in Alberta. There are still three levels of appeal in Alberta. Then if you look at the other area of jurisdiction that we often are compared to because of being the three largest provinces, Ontario has two levels of appeal, but the time limits are not as restrictive for entering those two levels of appeal. What kind of decision-making occurred to select the lesser of all in order to exist here in British Columbia?

**Hon. G. Bruce:** Basically, the decision with respect to the time frames was based on both the royal commission and Winter, to a certain degree. We did reflect on what others were doing in other jurisdictions. Primarily, though, in all of this we were looking, at best, to try and get a timely decision so that injured workers in this instance could get back to the job sooner rather than later.

We have tried to allow for enough time so that when a decision is made, it's not only the aspect of trying to get somebody through to an appeal process and get them a decision. Often there are other mitigating circumstances within one's own situation. I'm talking about an injured worker here. They would require further amounts of time to be able to put together their appeal or just even to reconsider what's taking place in their life. We've tried to balance the two with getting them a quick turnaround and at the same time allowing them enough time to gather whatever other evidence or information they need. It is something we will have to watch.

Our desire here was to work to the best interests of injured workers in being able to get them back into the workplace. It's very clear — statistically, I'm talking now — that where people are delayed in getting timely decisions, they can, quite frankly, become victims of the process more than even injured workers of the original happening. It is a balance that needs to be taken into account as we move this through.

We do have a substantive number of appeals already that are backlogged, which we will treat differently than the new process going forward. It's our hope, once that's finished, that if we're finding this other process is working to everybody's satisfaction, we could be even more timely. If we could expedite the appeal process in a more timely manner, we would encourage the board to do so — but not at the expense of allowing people the appropriate time to reassess where they're at and gather whatever evidence or information they need to put before the internal review or WCAT.

**J. MacPhail:** Has the structure of the WCAT been drafted, and if so, when will it be made public?

**Hon. G. Bruce:** Where we're at in all of that is that we will be, hopefully shortly, announcing the new chair of the Workers Compensation Appeal Tribunal.

On that, within the structure, there will probably be approximately 70 vice-chairs to carry the cases initially. There will still be a separate group that will look after the appeals that are currently in the system. We don't want to weigh down the new process going forward by the appeals that are already there, so we want to deal with them in a separate manner.

As I was mentioning at the past sitting of this committee, the actual implementation and setup of this is slated for the end of February.

[1020]

**J. MacPhail:** With the changes to the appeal process, where there will be one less level of appeal, will that mean there will be fewer people working in the appeal system?

**Hon. G. Bruce:** We believe so. Once the backlog's worked down, and that is substantive — we think that will probably take us two to three years to get that backlog and at the same time move the other appeal processes through in the timely manner that we hope to — there will ultimately be fewer. But part of our reasoning behind that is that in the instance of the first internal review, when it's more informal, we think that a lot of the decision-making can be expedited and corrected at that process, thus hopefully reducing the number of ongoing appeals to WCAT.

**J. MacPhail:** I noted a time line of two to three years. Two questions flow from that. Has the core review of WCB been finished? Secondly, the staffing of WCAT — are they orders-in-council appointees, or are they hired within the WCB?

**Hon. G. Bruce:** In respect to the adjudicators, in the first instance they will be appointed by the minister in consultation with the chair. Then, once that first round is complete, the legislation would change. They would be appointed by the chair in consultation with the minister. That's not a play on words, as I'm sure the member noticed in this legislation.

There's a fair, detailed process of what the chair must do and accomplish. It was our view that the chair then really must be the one ultimately responsible in respect to the appointments of the vice-chairs. It's a little bit of a transition here, but there would still be consultation with the minister.

The first round: minister appoints in consultation with the chair. From that point forward, it's the chair's responsibility to make the appointment in consultation with the minister. I'm speaking of this in respect to the adjudicators.

**J. MacPhail:** And the core review?

**Hon. G. Bruce:** The core review in a sense is a little bit of a misnomer in respect to the Hunt report and the Winter report. I'm hopeful that as I mentioned last night, as the new board of directors is appointed, they will be tasked with the Hunt report and the service

delivery of the whole WCB system. I'm hopeful that by the springtime, we will be pretty much at the completion of what one would call the core review.

However, I've made it clear that as we move through this, if there are requirements of change either by regulation or by legislation to make the workers compensation system more responsive, I will continue to work at that and bring about those changes that are necessary, perhaps by recommendations that come from the new board of directors as they are starting to work through it or if we're finding that what we had planned and thought would occur with the new Workers Compensation Appeal Tribunal.... If there needs to be some changes in that respect....

[1025]

Again, I want to be clear. My ultimate goal in all of this is to reform the workers compensation system to the point that there are good-quality initial decisions and a timely appeal process so that people can get on with their lives.

**J. MacPhail:** Well, I'm going to hold the minister to account on his agreement to make changes as the system unfolds — or hold the government to that commitment. I think that's key to this whole process, and actually, it's that commitment upon which this debate is being shaped. I am taking the minister at his word on that.

Now, there is a 15-month time line for the appeal process. Two questions. I'm sorry, I couldn't find in the bill where the 15-month appeal process is. So if the minister could just point it out to me, then perhaps he could outline the logic for this.

**Hon. G. Bruce:** We've done a little schematic of this as to how we believe it will work. You have the initial workers compensation system. I'm speaking to the 15 months. It's a best-estimate tally. At the time of decision that's rendered by the Workers Compensation Board, an injured worker — or, in the case of a dissatisfied employer as to the decision, the appellant — has 90 days to request a review, this internal review. There then is a 150-day time limit for that internal review to be completed. At the end of that internal review, if one is still dissatisfied, they then have 30 days to file an appeal to the Workers Compensation Appeal Tribunal, and the Workers Compensation Appeal Tribunal must render a decision within a 180-day time limit for a decision.

Now, there are some variances there that the board could accede to if they were looking for further information or what have you. This is kind of the best-case — everybody is ready; everybody has got everything — time frame for people. This, I think, adds up to approximately 15 months for that final decision, if one went through all of those steps.

**J. MacPhail:** So this is not in the legislation? Those time lines are where?

**Hon. G. Bruce:** The time lines are in the legislation. I'm just going to give you the.... They're in several dif-

ferent spots as it applies to each one. We can write them out for you, and we'll come back to that. As it applies to each one of those sections, the time lines are stated.

**J. MacPhail:** I would appreciate that, please.

Now, the original bill that was tabled in late spring had a time line of 11 months for the process to be completed. What was the nature of the feedback that convinced the government to change this to a time line of completing the appeal process to 15 months?

**Hon. G. Bruce:** Basically, one still could get through this in 11 months. What we've allowed in this are the maximum time frames of people making their appeal — more deference to the fact that like anything in life, things don't go bang, bang, bang, bang. You have a decision and you think about it, or maybe there are other pieces of information that you require. So we've tried to expand a titch.

[1030]

I come back to the fact of the timeliness of what we were trying to do, balanced off by the opportunity for people to have enough time to consider other evidence that they may need to gather or just their own situation in life. As the member would know, particularly with people that have suffered an injury, sometimes they're in situations where there are other types of stresses involved in their lives. Sitting healthy and whole, you might think: "Gee, I could make that decision almost immediately if I wanted to appeal." But in many instances, people aren't, obviously, completely healthy and whole. The stress of time lines can be a factor in their life. It's a balance of what we're trying to do here relative to giving quality decisions and timeliness and allowing people to get on with their lives, while at the same time recognizing the situation that individuals can be faced with.

If I can just come back to your initial question relative to the time lines, section 96.2, that would say it's 90 days to appeal to the internal review. Section 96.4(6) is the 150 days to the internal review for a decision to be made. Section 243(1) is the 30 days that one has to file an appeal to the Workers Compensation Appeal Tribunal. Section 253(4) is the six months, or 180 days, as we've spoken, that the Workers Compensation Appeal Tribunal has to render a decision.

**J. MacPhail:** There was an extension for the deadline for consultation over the summer. Was this one area that required an extension for consultation? Why did that extension for consultation occur?

**Hon. G. Bruce:** It hadn't been in the initial phase of putting out the previous bill for consultation, although we knew that during that six-month period we would hear from people. We are also, as the member knows, working on another piece of legislation that comes through in dealing with spousal benefits, which we're trying to finish up.

In consultation on both there were issues that were brought back. We were particularly concerned about the discussion of occupational disease and the appeal process and how that is applicable. It was during those discussions and others that it became apparent to us that it would be better to make some changes to the bill as it had been presented. Then, as we went through that, we found there was also consistency, just drafting consistency in respect to words and flow. As complex as it is, it would actually be easier to present a new bill rather than amending the bill, Bill 56.

[1035]

**J. MacPhail:** What happens when a worker and her appeal hit the 15-month deadline and it's not complete?

**Hon. G. Bruce:** Be clear: the time lines are the time lines to the board. In the instance that one has filed and has their appeal in there and the board was unable for whatever reason to achieve that 15-month date, the appellant wouldn't lose their right in standing of the appeal case. The question may then be asked: "Well, what's the consequence to the appeal tribunal? Why put these dates in here and not have them live up to something?" Our ongoing review of the competency and of the service delivery will be there, and this will be part of their competency test — to meet those targets.

Now, if there is extenuation or complexities to a particular appeal, the appeal tribunal has the right to extend that time frame, but there will be an ongoing review in an effort to improve the quality of the decision and the timeliness of that decision. We'll be expecting that the board or the Workers Compensation Appeal Tribunal does live to those time frames, but it does not limit.... Where one has filed appropriately and in the time frames, just because that time line isn't met, they're not hoisted out the window or anything. They still will follow through and get their case heard.

Section 33, sections 231 to 238 inclusive approved.

On section 33, section 239.

**J. MacPhail:** This is the second division of the whole appeal process. It's entitled "Appeal Rights." I have two areas of concern. The first is under sections 239(2)(b) and (c). When you read this, on the face of it, it is of concern, and I will tell you that it is the one area that we have had a substantial amount of feedback on. Sections 239(2)(b) and (c) say that a decision made under section 16, which is vocational rehabilitation, will not be appealable. These decisions were appealable before. A vocational rehabilitation is the work that the Workers Compensation Board does with an injured worker to return that person to work. Why was the change made to make this not appealable now?

**Hon. G. Bruce:** In respect to 239(2)(b), which I believe is where we're at, this speaks to the vocational

rehabilitation, and because this is discretionary, we've taken that from being an appealable issue.

In regards to (2)(c), this isn't in the aspect of whether there is to be an amount that is awarded. This speaks to where that amount — and there's some debate within 5 percent one way or the other — is not appealable. Basically, it's trying to focus people on those things — and the board and the tribunal — in bringing through a timely decision rather than having these things extenuated through appeal after appeal.

[1040]

**J. MacPhail:** So just to be clear on the second point, which says.... Yes, 239(2)(c) says that there will be no appeal "where the specified percentage of impairment has no range or has a range that does not exceed 5 percent."

My understanding, then, from the briefing that we received, is that if the decision for compensation is 23 percent and you want to appeal it.... If the range for compensation was 21 to 25 percent, that's not appealable, but you can appeal the level of compensation awarded.

**Hon. G. Bruce:** The member is correct in that definition.

**J. MacPhail:** Thank you very much. Now, just for your colleagues, that's why briefings help. I say that this minister is one of three that actually give briefings to the opposition. Thank you.

My second point is on the issue of vocational rehabilitation. Here's my concern. Vocational rehabilitation is assisting people to return to work. We managed to get some statistics about what it means. What's the benefit of people returning to work after they've been injured? The statistics show that if people experience a time-loss, work-related injury with a duration of more than six months, they have approximately a 50 percent probability of a return to work. Those with durations of more than one year have a 25 percent probability of a successful return to work. This means a permanent return to work. Those absent more than two years have virtually no chance of returning to work.

Here's my point. After a worker has been injured, it makes perfect sense as an economic investment to get that worker every possible opportunity to return to work. That's where vocational rehab comes in. The statistics clearly show that part of the problem is the length of time away from work in order to allow a life of employment. How does not letting people have as much access to vocational rehab as possible, including through an appeal process, help an injured worker — or their employer, for that matter?

**Hon. G. Bruce:** The member is absolutely correct, and those statistics are of great concern to all, particularly so if you happen to be an injured worker. As I've mentioned before, those that are injured, like anyone, are looking to very quickly — as quickly as they can — get back to the worksite and back into full employment

again. The appeal process, because one gets into debate about different issues, can substantially delay that to the point that one actually ends up becoming a victim of the system — I mentioned this before — rather than the whole concentration on finding ways to get back to the workforce.

We're not limiting vocational rehab here. What we are limiting is the appeal process to voc rehab. One of the service delivery aspects of things with the new board of directors will be how to make sure you can move someone quickly to voc rehab, physio or whatever is required, even if decisions haven't been rendered as to who's to blame here, so we can get that person back to work. Let's worry more afterwards about the decision as to who pays, as long as we're focusing on making sure that injured worker is given whatever training or rehab is beneficial to them.

In fact, speaking to a couple of people that offer those services, I've been given different examples where they were working with people and then found that there had been no decision. The individuals were left waiting for a decision. Then, four, five or six months later those individuals would get back to voc rehab or physio or whatever, and you had lost a lot of that initial important time of being able to assist people. Now, for some others, depending on the complexity or the damage that was done, it's quite a different situation altogether.

[1045]

Also, keep in mind when we're talking about the appeal process here, as I think I've stated before, there are somewhere in the neighbourhood of 180,000 cases a year. I think it's somewhere between 178,000 and 182,000 cases in a year. This past year we saw about 14,000 to 15,000 appeals in those 180,000 cases. There is the potential of some two million appealable decisions.

In this instance here, we are clearly stating that we're not.... I want to be clear. We're talking at this point about the appeal section. Sometimes I get confused. Were we talking about the appeal process, or were we talking about what's the initial direction here? The initial direction is to give that injured worker the service they need to be able to heal, to get whole again and get back to work.

What we're doing is saying, in respect to the vocational rehab, that vocational rehab is discretionary. You may need different things for whatever your injury may be, but that is not going to then be an appealable decision on what has been rendered as the level of vocational rehab that's brought down by the board.

**J. MacPhail:** This is going to be an area that we'll be monitoring very carefully, because, as we both now agree, it's an important process of getting injured workers back to work in a fit and healthy way. Not only is it excellent for the worker — and as we see, it's debilitating the longer they're out of the workforce — but it's also extremely important for the employer as well. An employer who invests in training a worker loses exponentially as that investment in training disappears because the worker is injured and not avail-

able to work. It will be one that we will be monitoring very carefully.

Section 33, sections 239 to 244 inclusive approved.

On section 33, section 245.

**J. MacPhail:** This section is division 3 of the overall part 4 appeals process, and it's called "Appeal Procedure." It takes us right up to section 253. I'm going to concentrate first on section 249, "Health professional assistance." We talked about this earlier, about what replaces the medical review panel, and I was referred to section 249, as the medical review panel is replaced now by the health professional assistance.

Now, I'm paraphrasing what the bill says, but I think it's accurate. When an appeal tribunal determines that independent advice from a health professional would assist in reaching a decision on appeal, they can retain a health professional to provide such assistance. Yet the definitions in the other part of the act make it clear that the advice from the health professional is not binding.

I'm wondering, I'm willing to be challenged on that description, but I think I'm accurate on it, so let me proceed with my question. If an independent health professional is asked to present advice on a case before appeal, why is it that advice is being sought but is not deemed to be binding under any circumstances? It's not as if the health professional is volunteering or being an advocate. The health professional is actually going to be hired by the appeals tribunal to provide that advice.

[1050]

**Hon. G. Bruce:** We're making a clear distinction that the Workers Compensation Appeal Tribunal is the final authority and makes the decision. That is very clearly a difference from what had been in place before, where one could opt out to a medical review panel and the medical review panel could give the final and binding decision. That also leads to all sorts of other delays and arguments. Our view, stemming from advice, was that the Workers Compensation Appeal Tribunal would be given that ultimate authority.

Built into this, as the member notes, is a process by which professionals can be involved to make information available where it's requested by the Workers Compensation Appeal Tribunal. There are other things that come into play in the decision-making process, besides just the medical evidence, that also have to be taken into consideration as to whether the appeal is accepted or whatever determination is made by the Workers Compensation Appeal Tribunal.

Also, probably more important is the aspect of consistency of decision-making, in that we've made it clear through this legislation that the policy of the board, the Workers Compensation Board, must be followed and adhered to at either of the review processes, the appeal processes — either the internal review or the Workers Compensation Appeal Tribunal. The Workers Compensation Appeal Tribunal must be consistent in their decision-making with the policies set by the board.

As I've mentioned earlier, there is a flowback process in which the Workers Compensation Appeal Tribunal can report back to the Workers Compensation Board where they feel there are inconsistencies coming forward in the workplace or in the policy that was developed by the board and that the board should reconsider their policies. But at the end of the day, the board's policies are the overriding basis of how decisions are made and how appeals are heard.

**J. MacPhail:** There is a very timely example of what it means to have the medical review panel eliminated and replaced with almost an advisory health professional assistance category. Every single MLA is currently being approached today by firefighters. The firefighters have always been excellent at bringing the attention of all MLAs, regardless of the government that's in power, to the issues they face.

Firefighters face workers compensation issues and challenges probably as much as any profession or any skilled category in our workforce. One of the things they're talking to us about is the fact that when they go before the appeal stage of a medical review panel, out of the last ten times, they've been awarded.... Well, I'm estimating. I'm sorry. The last number of times that they've gone before a medical review panel on appeal to have a certain type of cancer declared an occupational disease, they've won.

They had to do it on appeal to the medical review panel, because it's almost an issue of presumption of hazard for that particular profession, but it was the medical review panel, with substantial medical evidence, that showed the increased incidence of cancer among firefighters. That led to the decision for it to be declared a compensable disease, a work-related disease. In the past, experience has shown that it has been the medical review panel appeal that has led to certain occupational diseases being declared as a presumption of occupational disease, and therefore there is no necessity for that injured worker or ill worker to have to go through any appeal process.

[1055]

Where do the firefighters go now? They had an avenue they could approach to work on convincing the WCB, through their medical review panel evidence, that certain types of cancer were occupational diseases and that they should become presumptive diseases.

**Hon. G. Bruce:** Again, coming back to the importance of consistency in decision-making flowing from the policies of the board and the timeliness of that, in the instance of the firefighters that we're speaking of as an example, there are two processes available. First of all, the medical review that would be submitted as evidence.... We're expecting that the appeal tribunal wouldn't be paying lip service or just dismissing that type of evidence from professional people as to what's taking place in respect of that individual appeal case.

They will also be monitoring that they're hearing this. As the member well knows, sometimes a case comes up and starts to get standing by virtue of the

first appeal that's made. It builds strength as others follow through. It's the appeal tribunal's responsibility to be reporting back to the Workers Compensation Board, albeit they are separate entities. It's their responsibility to report back to the Workers Compensation Board on what they see as apparent inconsistencies between board policies and what is now, in effect, coming forward.

On the other hand, in respect to firefighters being an active organization, they will be able to make their cases known directly to the Workers Compensation Board as to changes that are occurring in the workplace that they think the board ought to reflect in its policy. There's a great deal of work to be undertaken here by the new board of directors in reviewing the policies of the Workers Compensation Board, of looking at the consistency of application and the timeliness of decision-making. I would love to assure the member that within months of all of these changes going through, the world will unfold as it should. But I'm quite certain that there will be challenges — I don't mean people challenges — for the board of directors as we rework the system, and it will take longer than those initial few months.

But there will be a great focus and emphasis at the Workers Compensation Board's board of directors level of working forward through their service delivery of good-quality and timely decisions. Also inherent in the legislation, to the chairman of the Workers Compensation Appeal Tribunal, is great focus and emphasis on making sure that the appeal decisions are not only consistent but also quality decisions — and their need to be able to reflect back to the Workers Compensation Board.

Section 33, sections 245 to 260 inclusive approved.

Section 33 approved.

On section 34.

**J. MacPhail:** I just figured out the numbering now. Thank you.

[1100]

Section 34 deals with part 2 of the new bill, transitional provisions. Could the minister recount again — he touched on this very briefly — how the transition to the new model will work?

**Hon. G. Bruce:** In the overall sense of transition — and I'm sure the member may have more questions, because this is a concern for people — when you get into the detail, we've tried to be as informative as we possibly could to help people through the process. At the end of November we would proclaim the medical review section. That would end the medical review panel, and then, as I mentioned, by the end of February 2003 the Workers Compensation Appeal Tribunal would be in effect. There then is, through all of that, a transitioning for people currently in the appeal process. Dependent on where they are in the process today would affect how they would flow through that transition.

**J. MacPhail:** Part of the issue always facing injured workers and their employers is communication between them and the board — or now the new appeal tribunal. Will there be some way of guaranteeing that communication has occurred so that people who are now going to have their appeals limited will understand it and will have received that information?

**Hon. G. Bruce:** The board will communicate with all those within the appeal process, but we've tried to do better than that particularly, as the member knows, in respect to the number of issues relative to workers compensation that come just to an MLA's office. We've done a chart as best we could and tried to offer many variables without confusing people as to where they would be. This would be an individual that is in the appeal process. Where do they fall in the spectrum of transition?

That is available and will also be pushed out to all of the constituency assistants as one frame and through all labour and business associations and groups. We will also be getting this information out to them so they, too, can help in assisting people in the process. Employer advisers and employee advisers will get this similar information.

I'm sure that even with the manner in which we've laid this out, there will be little nuances that come back from individual claimants that we'll have to try and deal with as best we can. What we're trying to do is bring this about in the smoothest, most consistent way possible, understanding that you have people already within the appeal process who perhaps are at a level of frustration already because they've been there for a length of time. Going forward from this point, we have, unfortunately, others who were injured on the worksite who would flow into the new process. We would hope we can continue to move them through in the manner that was prescribed here in the new legislation.

**J. MacPhail:** The one area I'm particularly concerned about is the area we've discussed where everyone will have the opportunity for one final adjudication under the Workers Compensation Appeal Tribunal. I'm sure this is an area that will require unbelievably consistent, solid and thorough communication between those who will now have one, and one opportunity only, to have one final adjudication. Is there going to be any special focus on this particular issue?

[1105]

**Hon. G. Bruce:** Not to take away from that part, but our whole emphasis on this part will be trying to get it right and get it focused, wherever one falls in the situation of appeal, so that they understand what they're faced with. It's of great concern, so I want to give the member assurance that this isn't, from my standpoint: "Oh, by the by, there's a transition piece here, and somewhere along the line you'll be looked after." It's by the simple fact of the great numbers of people already being put through a very protracted period of appeal. We want to try and assist them to move through as smoothly and in as timely a fashion as we possibly can.

All aspects of that will be treated in a very serious fashion and not just left to the individual trying to find their way through what has already probably been a pretty complex process for them.

**J. MacPhail:** Is the government relying on any other Canadian jurisdictions that have gone through such substantial change — with their experience with transition? Or has this not occurred in any other jurisdiction?

**Hon. G. Bruce:** Both Ontario and Nova Scotia have gone through similar aspects of this, in respect to the appeal process being from three to two — reduced numbers of appeals. Be that as it may, it's still very much a situation or a concern of this government, of this ministry and of this minister that the individual person, regardless of where they sit in the appeal process, is treated in as a compassionate and timely fashion as possible, given that there is a very large backlog we have to deal with.

**J. MacPhail:** Mr. Chair, that concludes my questions, but I do urge the minister to monitor very carefully the change, report publicly on the changes and be open to input from all of those affected — employers, workers — by these changes. We will take the minister at his word and will hold him accountable for delivering on a smooth transition to the new system.

Sections 34 to 46 inclusive approved.

Title approved.

**Hon. G. Bruce:** I move that we rise and report the bill complete without amendment.

Motion approved.

The committee rose at 11:08 a.m.

The House resumed; Mr. Speaker in the chair.

### Report and Third Reading of Bills

[1110]

Bill 63, Workers Compensation Amendment Act (No. 2), 2002, reported complete without amendment, read a third time and passed.

**Hon. G. Halsey-Brandt:** I call committee stage on Bill 66.

### Committee of the Whole House

#### PUBLIC SECTOR EMPLOYERS AMENDMENT ACT, 2002

The House in Committee of the Whole (Section B) on Bill 66; J. Weisbeck in the chair.

The committee met at 11:12 a.m.

On section 1, section 1.

**Hon. G. Bruce:** If I could just introduce my staff before I begin here. Joining my deputy minister, Mr. Lee Doney, with me is John Blakely, director of PSEC.

**J. MacPhail:** Under section 1, there's a new part 3.1 added that places limits on an employee's ability to accumulate sick leave and vacation time. What consultations were done with the affected employees on this?

**Hon. G. Bruce:** Just for reference here, this is part 3.1, not section 1, but section 5, part 3.1. That's fine. There was not any consultation done with the employees in this respect.

**J. MacPhail:** Sorry, I thought.... I'm working from the.... My apologies. It's under part 3.1, yes. Mr. Chair, can I just have a moment, please?

Section 1, section 1, to section 4, section 7(1) inclusive approved.

On section 5.

[1115]

**J. MacPhail:** Yes, sorry, the minister is correct. My original question was for section 5, part 3.1, which is adding the fact that there can't be accumulation of vacation and sick leave. So there was no consultation done in that area.

The minister said in his opening comments at second reading of the bill that the reason why the government now wants exempt employees to use their sick leave and vacation leave is in order to create a healthy workplace. I'm just curious how it jibes that if an exempt employee can't use his or her vacation, they now get paid out. How is that contributing to a healthy workplace? And I might add, Mr. Chair, that I expect with the massive downsizing that's occurring in the government now, there will be fewer opportunities for exempt employees to actually take their vacation during a vacation year.

**Hon. G. Bruce:** I'm not sure. Just let me come back to it. What we have said to employees in respect of vacation time is that everybody gets vacation time. If it is that they are unable to, for whatever reason, or don't take their vacation time in the year it is to be taken, at the end of the following year, the holidays — the vacation time that they were to have received — will be paid out to them. It's not an accumulated amount at the end of their time with government. It's paid out within the following year.

In respect to sick leave, sick leave was meant to be there for people that are truly sick. It still stands today that in this legislation here or not within this legislation, but within the arrangements that the sick leave is there as prescribed in their contracts. It can be accumu-

lated to the point that it is usable as bona fide sick leave. But given the time that that particular employee departs from government in whatever form, it is not a compensable amount. It's not a cash payout.

I just want to draw a line here in that prior to this — to the point that this legislation was introduced — a number of employees had the right to accumulate sick leave and to be paid out for that sick leave. To the date of the introduction of this legislation, they will be paid out for that sick leave. But going forward from the date of this bill being introduced, there will no longer be a cash payout for accumulated sick leave.

**J. MacPhail:** I'll deal with the vacation question in a moment. But on the sick leave, in his opening comments the minister suggested there were other benefit plans that would kick in for employees who have a catastrophic illness or a long-term illness. Of course, what excluded employees, exempt employees, used their vacation or sick leave banks for wasn't just to accumulate it at the end and cash it out. They also used it in terms of catastrophic illness and extended sickness, and that now is no longer available. What are the benefit plans that the minister is referring to upon which excluded employees can rely?

**Hon. G. Bruce:** I just want to be clear on that. There's no change to that. An employee can still accumulate sick leave. An employee today going forward maybe has, say, five or six years of healthy, good, productive time and finds themselves with a very significant illness five years from now, never having used any of the allotted sick leave time that they could have in those prior five years. Well, that sick leave has accumulated, and it's still there. In the time of need, they can use that sick leave.

Now, for that same employee in five years going forward, healthy and not having utilized any of that sick leave, who then leaves government, at that point that sick leave is not compensable. It is not a paid-out benefit.

[1120]

**J. MacPhail:** When this government first took office, one of the first announcements it made was to raise the salaries for excluded employees because the government of the day wanted to attract the best and the brightest and somehow suggested that it required proper and substantial increases in compensation. I understand that that was a legitimate point of view, although I must say that the people inside the public service, right up to the very top, are — virtually to a person — a professional, well-recognized, well-valued public service.

Having said that that was the government's initial view of what they needed to do to attract a public service, we now have the government taking away from that same group of employees. It's hard for the public to somehow understand the way compensation unfolds, particularly for the higher paid public servants of any province.

Let me just give you one comparison that may not often occur to the ordinary public. In the case of compensating for excluded employees, vacation banking is actually a highly valued acknowledgment of excluded public sector employees. Many people who work in our public service see it as a unique benefit that actually fits into their hectic work life. They don't have regular hours of work. In making contractual arrangements for hire of excluded employees, it was a highly valued asset of a job in the public service that had no other forms of protection and where the excluded employee, often in a management position, was going to be required to work long and hard. Well, that's become even more true today.

I know it takes a courageous soul to stand up and defend the higher paid public servants, but I want to contrast that to a benefit — for instance, in the forest sector, both lumber and pulp sides of it. The third shift in the private sector got extra compensation, because employers required the ability to attract people to work that third shift. It interfered with the family, had unusual work hours. This is no different than private sector compensation to attract employees to odd and difficult terms of work.

I'm just curious. If the government hasn't done any consultation on these issues, what now is the level of discussion with these same employees who have had their working conditions substantially altered? Is it not incumbent upon the government to actually sit down and talk with these employees so that they stay and we don't lose their expertise?

**Hon. G. Bruce:** PSEC is working with the excluded employees, making sure they fully understand what the effects of this change are. Where they have questions relative to their own personal situation, they're dealt with.

I think it's important to be clear that there isn't retroactivity to this legislation. What people have, they keep. If they have accumulated sick leave, they will be offered a plan of payout, I think, over the course of the next three years. I don't mean that they will be offered a plan over the next three years; they will be offered a plan which will see a graduated payout over the course of the next three years or so. Likewise, if they have accumulated sick leave, they'll be offered a similar plan over a period of time so that they are afforded the opportunity to lessen implications and impacts on the additional funds that are paid to them. We're trying to make that very clear.

[1125]

In respect to balance and the fairness of this, what we're talking about, really, in the overarching piece of legislation is clarity to what severance provisions would be provided and also the manner of how you would go about dealing with that and the notion that if it's for excluded personnel, of \$125,000 or above, their terms and contract conditions must be presented through to Treasury Board, and that everybody understands what they're getting into and what would in fact be the effect of this contract if one was to leave gov-

ernment for whatever reason. I think all of this, when we look at the scale of severance we've brought into effect, from 24 months to 18 months, and one takes a cross-Canada comparison, all the other jurisdictions.... I think very few are of legislative rank — they are mostly of policy — but some are. Some reflect 12 months. Some reflect, through policy, more common law, which would be the 24 months — or a combination of both.

We think that in speaking to the integrity and the professionalism of the public service, we are reflecting what's there in the marketplace. And we really are furthering what the member brought forward in 1997 in offering greater clarity as to those terms and conditions which would apply given that someone was to leave government.

**J. MacPhail:** Well, just to be clear, when the previous government brought in a maximum severance of 24 months, that was the common law, and it remains the common law. Unlike this government, which decides on occasion it can ignore common law or on other occasions decides to actually break contracts, the previous government merely implemented common law along with other restrictions on when and how severance would be paid.

I don't need an explanation. The people who are directly affected by this legislation require this explanation. How is it that the government, at the very beginning of its mandate, said that market conditions require that our public servants at the highest level be treated with extra care and extra compensation, and now market conditions require that their benefits be taken away? What change in market conditions has occurred between then and now?

**Hon. G. Bruce:** We're dealing, in this aspect here, with when somebody leaves, not their compensation. We're still adhering to the fact of what's in the marketplace. If somebody was to come to work for government in one of these excluded positions and the suggestion by whoever was doing the hiring was that the compensation package would be above that which was in the marketplace that one could look across government and see, then that person's plan would have been vetted and viewed by the Minister of Finance. If there were different conditions to be applied in attracting that person relative to their severance package — that it was to exceed requirements of what's in this legislation — that would have to be approved by Treasury Board.

I think we're being consistent in this, and I think that in respect to the issue of the common law and the marketplace, as the member well knows, there are variations out there right now in the jurisdictions across Canada, as I was mentioning, from the 12 months to the 24 months. Some jurisdictions themselves, specific to a province, have 12 months as a level for one aspect of the public service and up to 24 months for another aspect of the public service. We've brought the consistency through, I believe, in saying

that it is 18 months across the board for excluded and explained how one would follow through that process in coming to work in government here.

**J. MacPhail:** Well, perhaps I can provide a link between this and being able to attract excluded management-level workers. The elimination of vacation banking narrows what has become an increasingly tiny benefit gap between supervisory management and non-management positions. This narrowing discourages employees even more from moving into management ranks. Has the minister or his staff considered the impact this bill will have on the public sector's ability to actually attract qualified people into management and their stated goal of becoming an "employer of choice"?

[1130]

**Hon. G. Bruce:** It's our view that we're not diminishing here. The entitlement to vacation and payment of such, if one does not actually take the time off, is very clearly delineated. We're not taking that from anybody. Quite frankly, I think that more and more, as things change and improve in this province, it is clearly a place of choice for people to come and work — to invest and to work and to live. I think we're seeing signs of that as we progress through this first 15 months of change in British Columbia, and I'm quite confident that by the initiatives taken by this government, we'll see more and more of that as the further months and years unfold.

**J. MacPhail:** Well, it won't surprise you that I have a different prediction. The elimination of vacation banking by itself will have a major impact — it already has — on the morale of excluded managers, and this is at exactly the time that the government needs our excluded managers to carry out the government's service plans. These are the people who have to tell other people they're laid off, that they're without work. These are the people that have to communicate with patients and deliver the message to patients who can't get services.

Here's what I also predict. The impact is even more devastating because it comes immediately on the heels of a rollback of health care benefits for retirees, and these very same people, who are paying into the same pension plan, now know they're going to get less for their contributions. I actually predict that this will impede this government's ability to effectively carry out its agenda and that it will impede the delivery of quality service to the public, and this government will be labelled in the future as an employer to avoid, not to choose.

Now, I'm advised that the government sought legal advice on whether to make this legislation retroactive and that they came to the conclusion that they would face significant legal challenges if this legislation was made retroactive. Tell me: does the government, particularly this minister, have a lawyer for advice on one day and another lawyer for advice on another day? It

was this minister that introduced the legislation to retroactively cancel the contracts of health care workers, teachers and college instructors, and to cancel arbitration for physicians. Is there confusion amongst the legal advisers that this government has?

**Hon. G. Bruce:** Not to get into past legislation debate, we didn't retroactively cancel things in other legislation. I mean, the teachers' contract... That particular bill, that contract, was up. We took a section that had been negotiable and said that we had heard clearly that this was an item of concern — if you're talking about class size — that ought to be placed in legislation. In fact, we placed it in the School Act and prescribed class size. We didn't feel that was something that ought to be negotiable.

It's not that I use different legal advice. It's that very clearly, the member opposite to me and I see the world perhaps through different eyes as to what actually needed to be and is being done in the province of British Columbia to once again make British Columbia a leader in Canada.

**J. MacPhail:** Well, in fact, it's all very well and good that we see things through different eyes, but one person's memory is failing, and it ain't mine. This government did cancel contracts. We've been through a situation now where teachers have had to appear before the Labour Relations Board and have their contracts stripped because of the retroactive nature of the legislation on cancelling parts of their collective agreement. Section after section after section has been stripped from their collective agreements. There's no other spin the minister can put on it. If we look at the doctors, there's definitely no other spin you can put on it than they took away their legal right to arbitration.

[1135]

I'm just curious about consistency where this government interferes with the contractual relationship between the government and the people paid by the government. There is no consistency, and that creates even greater dismay amongst their various employees.

On the issue of vacation and no longer having the ability to bank vacation, I am told that most excluded managers will now insist on taking all their vacation time rather than accepting payment. As you add extra payment to a person's salary, of course, they pay the marginal tax rate. The marginal tax rate, by the nature of what is still a somewhat progressive tax system in this province, means they pay more tax on the payout. Has the minister considered that this legislation will have a negative impact on productivity in the public service and that the cost of backfilling management positions while they take their additional vacation time each year will add costs to the government?

**Hon. G. Bruce:** First, I don't want to touch back on this, but I will touch back on this in respect to the teachers' contract. That contract was up, and as we well know, there had not been a negotiated settlement with the BCTF and the government for pretty much ten

years. It was pretty clear that government would have to step in and deal with it, and we did. As the member speaks to the other parts of the contracts they have, with other issues and that, this overriding piece of legislation that was brought in to settle the dispute required that the other contracts be consistent with what it was that we brought into effect. I just want to bring out that point and make it clear.

In regard to the payout and the tax implications, first of all, we wish to and are going to, where we can, encourage senior executives to take their vacations. Sometimes that's easier said than done at the pace many of these people work and the hours they put in, as this member has alluded to, and with the great amount of work this government has to undertake to, again, restore it to an area and a province of prosperity so that we aren't having to have transfer payments from the federal government come to this province.

That being said, we're going to try and encourage people, where we can, to take their holidays. In respect to the payout on the accumulated basis, through policy, we're going to try and develop that in such a manner over a period of time — three, five years or whatever — where there are accumulated amounts, that it can be paid out in such a manner that it mitigates for them some of the tax implications that may face them if it were to be one lump sum in a cheque written to them.

**J. MacPhail:** Mr. Chair, I want to vote against, on division, section 14.2, which is a major part of section 5. I seek your advice on how to do that.

[1140]

**The Chair:** In order to do that, member, we'll have to deal with each subsection.

Section 5, section 14.1 approved.

Section 5, section 14.2 approved on division.

Section 5, sections 14.3 to 14.9 inclusive approved.

Sections 5 to 9 inclusive approved.

Schedule approved.

Title approved.

**Hon. G. Bruce:** I move that we rise and report completion of the bill.

Motion approved.

The committee rose at 11:41 a.m.

The House resumed; Mr. Speaker in the chair.

### **Report and Third Reading of Bills**

Bill 66, Public Sector Employers Amendment Act, 2002, reported complete without amendment, read a third time and passed.

Hon. K. Falcon moved adjournment of the House.

Motion approved.

The House adjourned at 11:43 a.m.